



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: FWP - 175541

PRELIMINARY RECITALS

Pursuant to a petition filed on July 15, 2016, under Wis. Admin. Code § HA 3.03(4) (*This subprogram no longer exists.), to review a decision by the Milwaukee Enrollment Services regarding FoodShare benefits (FS), a hearing was held on August 10, 2016, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly discontinued the Petitioner's FS benefits effective July 1, 2016 due to using three time-limited benefit months.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703

By: [REDACTED]
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On March 8, 2016, the Petitioner completed a FS renewal.

3. On March 15, 2015, the agency issued a Notice of Decision to the Petitioner informing him that he would receive FS benefits of \$194/month effective April 1, 2016. The notice informed him this was based on no reported household income and rent expense of \$100/month.
4. On March 15, 2016, April 28, 2016 and May 5, 2016, the agency issued notices of FSET referral to the Petitioner. The notices informed the Petitioner that he would receive 3 months of time-limited FS benefits unless he met the FS work requirements. The notices specified the three ways to meet the work requirements. The notice informed him that his begin month was April, 2016.
5. On March 24, 2016, the agency issued an appointment letter to the Petitioner informing him that he was scheduled for an FSET appointment on April 4, 2016. The Petitioner appeared and was enrolled in the FSET program. An Employability Plan was created for the Petitioner. Two hours of FSET work requirements were logged for the Petitioner.
6. On April 8, 2016, the agency issued an appointment letter to the Petitioner informing him that he was scheduled for an FSET appointment on April 14, 2014 at 12:30 p.m. On April 13, 2014, an agency worker left a voicemail reminder of the Petitioner's appointment. The Petitioner did not appear for his appointment.
7. On April 15, 2016, the agency issued an appointment letter to the Petitioner informing him that he was scheduled for an FSET appointment on April 21, 2016 at 10:30 a.m. On April 21, 2016, Petitioner was assigned to 20 hours of job search activities. He was advised to attend a class at the [REDACTED] and attend workfare 1x/week for 6 hours. Petitioner was also given job leads.
8. On April 22, 2016, the agency issued an appointment letter to the Petitioner informing him that he was scheduled for an FSET appointment on April 27, 2016 at 11:45 a.m. On April 27, 2016, Petitioner's EP was updated to have the Petitioner complete 9 hours of job search activities and 11 hours of [REDACTED].
9. The Petitioner logged 2 hours of FSET work activities for April, 2016.
10. On May 4, 2016, the Petitioner attended a class at the [REDACTED]. He also met with an agency worker to update his EP.
11. On May 18, 2016, the Petitioner's EP was updated. He was given job leads and assigned to 11 hours of [REDACTED] and 7.5 hours of job search activities.
12. For May, 2016, the Petitioner logged a total of 4 hours of work activities.
13. On June 1, 2016, the Petitioner's EP was updated. The worker advised the Petitioner that June would be his 3rd time-limited benefit month. Petitioner told the worker that he was doing some painting work. The agency worker advised the Petitioner that he needed to log verification of work activities.
14. For June, 2016, the Petitioner logged 0 hours of work activities.
15. The Petitioner received FS benefits in April, May and June, 2016. Petitioner did not meet FSET work requirements of 80 hours/month of work activities for those months.
16. On June 17, 2016, the agency issued a Notice of Decision to the Petitioner informing him that his FS benefits would end July 1, 2016 due to using 3 time-limited benefit months.

DISCUSSION

Pursuant to a provision of Wisconsin's 2007-2009 biennial budget, Wisconsin has operated a voluntary FoodShare Employment and Training (FSET) program since 2008. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) limits the receipt of FS benefits to three full

months in a 36-month time period for Able-Bodied Adults without Dependents (ABAWDs) who do not meet the work requirement or meet an exemption from the work requirement.

6.3.2 Non-Exempt ABAWD Participation Requirements

Non-exempt ABAWDs who do not meet the ABAWD work requirement will only be allowed to receive up to three full months of FoodShare (FS) benefits in a 36-month time period. ABAWDs subject to time-limited benefits (TLBs) may choose to meet the work requirement by participating in FSET.

Wisconsin FSET Handbook, § 6.3.2.

As part of Wisconsin's 2014-15 biennial budget, 2013 Wisconsin Act 20 created Wis. Stat., §49.79(10), which mandated FS eligibility and work requirements for ABAWDs to be implemented in Wisconsin beginning in 2014, consistent with federal regulations 7 CFR §273.7 and 7 CFR §273.24. The program began in Milwaukee County effective April 1, 2015, and FS recipients were required to meet the requirements beginning with the next FS review completed after April 1, 2015. FoodShare Wisconsin Handbook, §3.17.1.2.

Under Wis. Stat., §49.79(10), an ABAWD is required to fulfill a work requirement. If he does not fulfill the work requirement, he is limited to receiving no more than three months' FS during a three year period. The requirements are stated in the FSET Handbook, as follows:

6.3.2.1 Definition of Working for ABAWDs

For ABAWDs, working is defined as one of the following:

- Work in exchange for money;
- Work in exchange for goods or services (in-kind);
- Unpaid work (e.g. volunteer work, community service);
- Self-employment; or
- Any combination of the above.

6.3.2.2 ABAWD Work Requirement

An ABAWD is considered to be meeting the ABAWD work requirement if one of the following applies:

- Working a minimum of 80 hours per month. Use converted work hours if paid weekly or bi-weekly;
- Participating in and complying with the requirements of an allowable work program at least 80 hours per month; or
- Both working and participating in an allowable work program for a combined total of at least 80 hours per month.
- Participating in and complying with the requirements of a workfare program.

FSET Handbook, §§ 6.3.2.1 & 6.3.2.2; and see FoodShare Wisconsin Handbook at §3.17.1.

To meet the work requirement the ABAWD must work a minimum of 80 hours per month, participate in a work program 80 hours per month, or a combination of both for 80 hours per month. FoodShare Wisconsin Handbook, §3.17.1.7. The person is limited to three months of FS eligibility in which he is not meeting the 80-hour requirement and is not exempt. Ibid., §3.17.1.9. FS ends after three months of failing to meet the work requirement, but eligibility can begin again if the person becomes exempt or meets the

work requirement for a 30-day period (the person could reapply for FS after meeting the requirement for 30 days). Ibid., §3.17.1.11.

At the hearing, the Petitioner did not dispute that he did not meet FSET work requirements for April, May or June, 2016 and that he received his FS benefits during those months. The Petitioner testified that he was doing odd jobs during that period but he did not provide any verification of these jobs. He testified that he was going through a difficult time separating from his wife and taking care of his daughter. He testified that his daughter lives with his wife so he is not the primary caretaker.

The Petitioner did not demonstrate that he was exempt from FSET work requirements. The Petitioner did appear for most of his FSET appointments but he did not follow through on the requirements in his Employability Plan. He was advised by the agency numerous times that failure to meet work requirements would result in a termination of FS benefits.

Because the Petitioner had not demonstrated that he was exempt from the FSET requirements and he does not dispute that he did not meet those requirements in April, May and June, 2016 when he received FS benefits, I must conclude that the agency properly terminated his FS benefits effective July 1, 2016.

As a point of information to the Petitioner, the FoodShare Wisconsin Handbook provides for regaining FS eligibility as follows:

3.17.1.11 Regaining Eligibility after Exhausting 3 Months of Time-Limited Benefits

There is no limit on how many times an ABAWD may regain eligibility after exhausting three months of TLBs. A new application is required if the ABAWD re-requests FS as an assistance group of one. If an ABAWD is requesting FS on an ongoing case, follow the person add policy to re-establish FS eligibility (6.1.3.3). ABAWDs who have exhausted three months of TLBs during a 36-month period may regain eligibility by:

1. Meeting the ABAWD work requirement for at least 30 consecutive days prior to the new FS filing date and currently meeting the work requirement, OR verifying that the work requirement will be met within 30 days of the new filing date. The work requirement can be met by:
 - Working a minimum of 80 hours in the 30-day period;
 - Participating in and complying with requirements of an allowable work program, such as Workforce Investment Act (WIA) or a Trade Adjustment Assistance Act program, for at least 80 hours in the 30-day period. FS eligibility is a required prerequisite to FSET enrollment, so an ABAWD cannot regain eligibility through FSET participation after FS closes. Keep in mind, this is only for Non-Exempt ABAWDs who have exhausted their 3 TLBs; or
 - A combination of work and participation in an allowable work program for a minimum of 80 hours in the 30-day period;
2. Currently meeting an ABAWD exemption at the time of the application and providing verification of the exemption; or
3. The ABAWD's 36-month period expires.

An ABAWD who has exhausted 3 months of TLBs and is not meeting one of the above requirements at the time of re-application is ineligible for FoodShare. If the ineligible

ABAWD is a member of an open FS group, the ABAWD will be counted as a pro-rated deemer. See 4.7.5 Prorated Deeming.

The Petitioner must find a job, participate in another allowable work program, or a combination of both for 80 hours in an immediate past month or anticipated in the next future month, with verification. It is advisable that the Petitioner a Milwaukee income maintenance worker to discuss ways to regain eligibility or he will remain ineligible through the 36 month period.

CONCLUSIONS OF LAW

The agency properly discontinued the Petitioner's FS benefits effective July 1, 2016 due to using three time-limited benefit months.

THEREFORE, it is

ORDERED

That the Petitioner's appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 6th day of September, 2016

\s _____
Debra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on September 6, 2016.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability